

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

GREGORY McKENNA,  
Plaintiff,  
v.  
AVAYA, INC.,  
Defendant.

Case No. 5:09-CV-05706 PVT

**ORDER REGARDING DEFENDANT  
AVAYA INC.'S OBJECTIONS TO  
EVIDENCE SUBMITTED BY  
PLAINTIFF GREGORY McKENNA IN  
SUPPORT OF MOTION FOR PARTIAL  
SUMMARY JUDGMENT.**

Defendant Avaya, Inc. ("Avaya") objects to evidence submitted by Plaintiff Gregory McKenna ("McKenna") in support of Plaintiff's motion for partial summary judgment. On February 23, 2010, the parties appeared for a hearing. Having reviewed the papers and considered the arguments of counsel,

IT IS HEREBY ORDERED that Defendant's motion is DENIED as follows.

Defendant objects to two pieces of evidence Plaintiff submitted in support of his motion for partial summary judgment.

**I. Declaration of Gregory McKenna**

Exhibit 1 to the McKenna Declaration is an email sent to Pat McCullough wherein Mr. Ill states, "[p]er our conversation, when Greg McKenna was hired, we agreed to give him a one year severance package if he should be asked to leave Avaya for reasons other than cause."

Defendant objects to this declaration and Exhibit 1 based on lack of personal knowledge of

1 the Declarant (Mr. McKenna), lack of authentication and relevance, and hearsay.

2 Plaintiff responds that he does have personal knowledge of his email, as he received it in his  
3 inbox from Mr. Ill. Plaintiff asserts that the document can be authenticated according to the Federal  
4 Rules of Evidence 901(b)(1). Additionally, Plaintiff states that the document is not be offered to  
5 prove the validity of the statements made thereon, but simply to show that the statements were made.

6 Whether these objections are sustained or overruled does not change the outcome of the  
7 partial summary judgment as to the fifth affirmative defense, and thus the court declines to rule on  
8 them at this time.

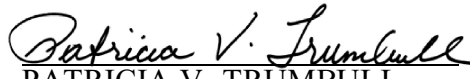
9 **II. Declaration of James P. Keenley**

10 In this declaration, Defendant's Force Management Program was attached as an exhibit.

11 As Plaintiff correctly noted, this objection is moot as Defendant filed its own Declaration  
12 with a substantially identical document.

13 IT IS SO ORDERED.

14 Dated: 4/9/10

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16 PATRICIA V. TRUMBULL  
17 United States Magistrate Judge  
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